

Ag Subject

OLL-85-0508
13 February 1985

MEMORANDUM FOR: See Distribution

FROM: Chief, Legislation Division
Office of Legislative Liaison

SUBJECT: Omnibus Intelligence and Security
Improvement Act

1. Attached for your review and comment is H.R. 1082, the Omnibus Intelligence and Security Improvements Act, which was recently introduced by Representative Bob Stump, Ranking Minority Member, HPSCI. Mr. Stump has requested the Administration's views on the various provisions contained in this bill.

2. As the title of the bill implies, it addresses a number of positive steps intended to improve our intelligence, counterintelligence and security capabilities. Its ten titles include provisions addressing expenditures in excess of program authorizations (Title I); pretrial notification of a defendant's intention to use a "CIA defense" in criminal proceedings (Title II); improved access by the FBI to bank records and tax return information for counterintelligence investigations (Title III); leaks by federal employees (Title IV); federal polygraph and prepublication review use (Title V); application of the death penalty to treason and espionage offenses (Title VI); expedited naturalization for individuals making significant contributions to the national security (Title VII); amendments to the Intelligence Identities Protection Act (Title VIII); and Foreign Intelligence Surveillance Act (Title IX); and the undertaking by FBI of a comprehensive survey of the personnel and physical security practices of the Congress.

3. Mr. Stump's intention is to attach some of these individual titles to the 1986 Intelligence Authorization Bill and to other appropriate vehicles receiving fast track consideration. As you will note, certain of the above proposals addressing leaks and defector citizenship already are included in the latest draft of this year's authorization bill, although there are significant differences between our draft and the bill's provisions in this regard.

SUBJECT: Omnibus Intelligence and Security Improvement Act


4. I would appreciate receiving your comments on the attached bill by COB 19 February 1985.




STAT

Attachment:
As stated

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OLL/LD,  13Feb85

OMNIBUS INTELLIGENCE AND SECURITY IMPROVEMENT ACT

SUMMARY

Title I--Recurring Intelligence Authorization Provision Codification Act

Title I of the bill codifies as permanent law a provision which has been included in past fiscal years in the intelligence authorization acts. The provision ensures notification to appropriate committees of Congress of expenditures by U.S. intelligence agencies in excess of program authorizations. Placing the provision permanently in the National Security Act of 1947 avoids the potential problem of lapse of the provision between the end of a fiscal year and the enactment of an intelligence authorization act for the following fiscal year.

Title II--Intelligence or Law Enforcement Defense Pretrial Notification Act

Title II of the bill amends the Federal Rules of Criminal Procedure to require a defendant to give notice prior to trial if he intends to claim in his defense that he was, or believed he was, acting on behalf of a federal law enforcement or intelligence agency at the time of the alleged offense. In recent years, the number of cases in which defendants have falsely claimed at trial to have been working secretly for a U.S. intelligence or law enforcement agency has increased dramatically. Title II of the bill would eliminate the element of surprise and allow for a full and fair trial of such claims.

Title III--Foreign Counterintelligence Investigation Improvements Act

Title III of the bill will improve the ability of the United States to defend itself against espionage by the agents of hostile foreign powers. Title III amends the Right to Financial Privacy Act to improve Federal Bureau of Investigation access to bank records for counterintelligence investigations. Title III also amends the Internal Revenue Code to give the FBI access to the tax return and return information of agents of foreign powers. Finally, Title III amends the State Department Basic Authorities Act to ensure that travel within the United States by foreign diplomatic personnel to high technology areas is clearly consistent with U.S. national security.

Title IV--Federal Employee Unauthorized Disclosure of Classified Information Act

Title IV of the bill amends title 18 of the United States Code to establish as a federal crime the intentional unauthorized disclosure of classified information by a federal employee. Currently, such disclosures are per se criminal offenses only if the classified information concerns communications intelligence and cryptographic information, the identities of covert U.S. intelligence agents, or atomic energy restricted data. Title IV will establish criminal penalties for unauthorized disclosure of the other types of information whose disclosure can reasonably be expected to cause damage to the national security. By virtue of Title IV, disclosure of U.S. national security secrets by U.S. personnel, who have voluntarily assumed positions of high national trust, would be subject to criminal penalties.

Title V--Federal Polygraph and Prepublication Review Limitation Act

Title V of the bill would regulate the use of polygraph examinations and prepublication review requirements by the United States government with respect to federal employees. The legislation restricts substantially the use of these security techniques, while carefully preserving their use in sensitive intelligence, security and special access programs and, in certain circumstances, in law enforcement investigations.

Title VI--Espionage and Treason Capital Punishment Procedures Act

Title VI of the bill amends title 18 of the United States Code to establish constitutional procedures to implement the existing death penalty provisions of statutes punishing espionage and treason. In 1972, the Supreme Court struck down the application of the death penalty because of the way in which it was applied. Title VI of the bill will provide constitutional procedures to permit imposition of the death sentence in appropriate cases for espionage and treason.

Title VI provides for a separate sentencing hearing, after conviction for espionage or treason, to determine whether to impose a sentence of death. The jury, or, if the defendant and the government so agree, the judge, will consider a number of mitigating and aggravating factors to determine whether, in the particular facts and circumstances of the case, the death sentence is warranted. Title VI also provides expedited procedures for appellate court review of a sentence of death.

Title VII--Foreign Intelligence Source Improvement Act

Title VII of the bill amends the Central Intelligence Agency Act of 1949 to permit the President to naturalize a maximum of five persons per year admitted to the United States for permanent residence under the existing provisions of the CIA Act because of their critical contributions to the security of the United States. Title VII would enable the United States to use the potential for U.S. citizenship as a strong inducement to highly-placed individuals in hostile foreign countries to become U.S. intelligence sources.

Title VIII--Intelligence Identities Protection-Related Amendments

Title VIII of the bill amends the existing provision of title 5 of the United States Code which terminates the federal annuity benefits of a federal employee convicted of certain national security crimes. Title VIII would include offenses under section 601 of the National Security Act of 1947, which prohibits disclosure of the identities of covert U.S. intelligence agents, among those annuity-disqualifying crimes.

Title VIII also amends chapter 119 of title 18 of the United States Code, which, among other things, provides for court orders for interception of wire and oral communications in investigations of certain national security crimes. Title VII would include offenses under section 601 of the National Security Act of 1947, which prohibits disclosure of the identities of covert U.S. intelligence agents, among those crimes for which such interception orders could be obtained.

Title IX--Foreign Intelligence Surveillance Amendments

Title IX amends the Foreign Intelligence Surveillance Act of 1978 (FISA) to extend from twenty-four hours to forty-eight hours the period during which emergency foreign intelligence electronic surveillances may be conducted on the authority of the Attorney General. Title IX also amends the FISA to permit retention and dissemination of communications constituting threats of death or serious bodily harm incidentally overheard while conducting electronic testing, training or security countermeasures in accordance with the FISA. Finally, Title IX clarifies the relationship between the authority of the government to conduct law enforcement surveillances under chapter 119 of title 18 of the United States Code and its authority to conduct foreign intelligence electronic surveillances under the FISA, by making clear that the government may proceed under either authority when both apply.

Title X--Congressional Security Survey Act

Title X provides for a comprehensive survey of the personnel, physical, document and communications security programs relating to classified information possessed by the legislative branch. Title IX requires the Director of the FBI to conduct the survey under the guidance of congressional leadership and to report to the leadership by January 3, 1986 with recommendations for improvement of the security of classified information in the legislative branch.

I

99TH CONGRESS
1ST SESSION

H. R. 1082

To improve the effectiveness of United States intelligence activities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 1985

Mr. STUMP introduced the following bill; which was referred jointly to the Permanent Select Committee on Intelligence, the Committees on the Judiciary, Banking, Finance and Urban Affairs, Ways and Means, Foreign Affairs, Post Office and Civil Service, and Armed Services

A BILL

To improve the effectiveness of United States intelligence activities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Omnibus Intelligence and
4 Security Improvements Act”.

5 TITLE I

6 SEC. 101. This title may be cited as the “Recurring
7 Intelligence Authorization Provision Codification Act”.

8 SEC. 102. (a) Title V of the National Security Act of
9 1947 is amended by adding at the end thereof the following:

1 SEC. 202. The Federal Rules of Criminal Procedure are
2 amending by adding after rule 12.2 the following new rule:
3 **“Rule 12.3 Notice of Intelligence or Law Enforcement**
4 **Defense**

5 “(a) NOTICE AND DISCLOSURE BY DEFENDANT.—If
6 the defendant intends to raise in his defense that, at the time
7 of the alleged offense, he was, or believed he was, exercising
8 the public authority of the United States on behalf of a Fed-
9 eral intelligence or law enforcement agency, he shall file with
10 the clerk and serve upon the attorney for the Government a
11 written notice stating that he intends to raise the matter in
12 his defense, stating the agency or agencies on whose behalf
13 he was, or believed he was, acting, and stating the names
14 and addresses of the witnesses upon whom he intends to rely
15 to establish the matter. The defendant shall file and serve
16 such notice at least twenty days prior to trial.

17 “(b) DISCLOSURE BY GOVERNMENT.—Within fifteen
18 days after service upon the attorney for the Government by
19 the defendant of the written notice of intention required by
20 subdivision (a), the attorney for the Government shall file
21 with the clerk and serve upon the defendant or his attorney a
22 written notice stating the names and addresses of the wit-
23 nesses upon whom the Government intends to rely on the
24 issue whether at the time of the alleged offense, the defend-
25 ant was, or believed he was, exercising the public authority

1 of the United States on behalf of a Federal intelligence or
2 law enforcement agency.

3 “(c) CONTINUING DUTY TO DISCLOSE.—If prior to or
4 during trial a party learns of an additional witness whose
5 identity, if known, should have been included in the informa-
6 tion furnished under subdivision (a) or (b), the party shall
7 promptly notify the other party or his attorney of the exist-
8 ence and name and address of such additional witnesses.

9 “(d) FAILURE TO COMPLY.—Upon the failure of either
10 party to comply with the requirements of this rule, the court
11 may exclude the testimony of any undisclosed witness offered
12 by such party concerning whether, at the time of the alleged
13 offense, the defendant was, or believed he was, exercising the
14 public authority of the United States on behalf of a Federal
15 intelligence or law enforcement agency. This subdivision
16 shall not limit the right of the defendant to testify in his own
17 behalf concerning whether he was, or believed he was, exer-
18 cising the public authority of the United States on behalf of a
19 Federal intelligence or law enforcement agency, but if the
20 defendant so testifies without giving the written notice of
21 intention required by subdivision (a), the court shall recess
22 the trial for a reasonable time to permit the Government to
23 prepare to meet the issue.

1 “(e) EXCEPTIONS TO TIME REQUIREMENTS.—For
2 good cause shown, the court may allow late performance of
3 acts required by this rule to be performed.

4 “(f) The provisions of this rule shall be in addition to,
5 and shall not supersede, the provisions of the Classified Infor-
6 mation Procedures Act (18 U.S.C. App.).”.

7 **TITLE III**

8 **SEC. 301.** This title may be cited as the “Foreign Coun-
9 terintelligence Investigation Improvements Act”.

10 **SEC. 302.** Section 1114(a) of the Right to Financial Pri-
11 vacy Act of 1978 (12 U.S.C. 3414) is amended by adding at
12 the end thereof the following new paragraph:

13 “(5)(A) Financial institutions, and officers, employees,
14 and agents thereof, shall comply with a request pursuant to
15 this subsection by the Federal Bureau of Investigation for
16 financial records when such request has been approved by the
17 Attorney General or his designee for foreign counterintelli-
18 gence purposes.

19 “(B) Financial institutions, and officers, employees, and
20 agents thereof, shall be immune from any civil or criminal
21 liability for efforts to comply with a request described in sub-
22 paragraph (A) of this paragraph.”.

23 **SEC. 303.** Section 6103(i) of title 26, United States
24 Code is amended by adding at the end thereof the following
25 new paragraph:

1 “(8) FEDERAL BUREAU OF INVESTIGATION
2 COUNTERINTELLIGENCE ACTIVITIES.—Upon a deter-
3 mination by the Attorney General that there is proba-
4 ble cause to believe that a taxpayer is a foreign power
5 or an agent of a foreign power (as defined in section
6 101 of the Foreign Intelligence Surveillance Act of
7 1978 (50 U.S.C. 1801)), the return of the taxpayer
8 and return information which relates to such taxpayer
9 shall, upon request for foreign counterintelligence pur-
10 poses by the Federal Bureau of Investigation approved
11 by the Attorney General, be open (to the extent of the
12 approved request) to inspection by, or disclosure to, the
13 Federal Bureau of Investigation.”.

14 SEC. 304. Section 204(a) of the State Department Basic
15 Authorities Act of 1956 (22 U.S.C. 4304(a)) is amended by
16 inserting “(1)” after “(a)” and adding at the end thereof the
17 following:

18 “(2) Except as provided in paragraph (3) of this subsec-
19 tion, the Secretary shall deny to any member of a foreign
20 mission the benefit of travel within the United States to—

21 “(A) an area in which exists a substantial concen-
22 tration of high-technology industry, as determined by
23 the Secretary of Commerce, or

1 “(B) an area in which exists any industry relating
2 to militarily critical technologies, as determined by the
3 Secretary of Defense.

4 “(3) The Secretary may confer upon a member of a for-
5 eign mission the benefit of travel within the United States
6 which would otherwise be prohibited by paragraph (2) of this
7 subsection if the Director of the Federal Bureau of Investiga-
8 tion, after consultation with the Secretary of Defense and the
9 Director of Central Intelligence, has determined and certified
10 that such travel is clearly consistent with the national secur-
11 ity interests of the United States.

12 “(4) The acts authorized or required of the Secretary
13 and the Director of the Federal Bureau of Investigation by
14 paragraph (3) of this subsection shall be done on a case-by-
15 case basis with respect to travel by a member of a foreign
16 mission from any State which does not routinely permit mem-
17 bers of United States missions to that State to travel without
18 hindrance to areas in that State similar to those described in
19 paragraph (2) of this subsection.”.

20 TITLE IV

21 SEC. 401. This title may be cited as the “Federal Em-
22 ployee Unauthorized Disclosure of Classified Information
23 Act”.

1 SEC. 402. (a) Chapter 93 of title 18, United States
2 Code is amended by adding at the end thereof the following
3 new section:

4 **"§ 1924. Unauthorized disclosure of classified information**
5 **by Federal personnel**

6 “(a) Whoever, being an officer or employee of the
7 United States, intentionally discloses classified information to
8 an individual not authorized to receive classified information
9 shall be fined \$15,000 or imprisoned for not more than three
10 years, or both.

11 “(b) It shall be a defense to prosecution under this sec-
12 tion that the defendant reasonably believed that he had
13 lawful authority to disclose the classified information in the
14 circumstances.

15 “(c) Nothing in this section shall be construed to author-
16 ize or permit the withholding of information from the
17 Congress.

18 “(d) For purposes of this section—

19 “(1) ‘authorized’ means having authority, right, or
20 permission pursuant to the provisions of a statute, Ex-
21 ecutive order, directive of the head of any department
22 engaged in foreign relations, national defense, or for-
23 eign intelligence or counterintelligence activities, order
24 of any court of the United States, or rule or resolution
25 of the House of Representatives or the Senate;

1 “(2) ‘classified information’ has the meaning set
2 forth in Section 1(a) of the Classified Information Pro-
3 cedures Act (18 U.S.C. App.);

4 “(3) ‘discloses’ has the meaning set forth in Sec-
5 tion 606(3) of the National Security Act of 1947 (50
6 U.S.C. 426(3)); and

7 “(4) ‘officer or employee of the United States’
8 means any member of the civil service or the uni-
9 formed services as defined in section 2101 of title 5,
10 United States Code.”.

11 (b) The table of contents of chapter 93 of title 18,
12 United States Code is amended by adding at the end thereof
13 the following:

"1924. Unauthorized disclosure of classified information by Federal personnel."

14 TITLE V

15 SEC. 501. This title may be cited as the “Federal Poly-
16 graph and Prepublication Review Limitation Act”.

17 SEC. 502. (a) Chapter 73 of title 5, United States Code
18 is amended by adding at the end thereof the following new
19 subchapter:

20 “SUBCHAPTER VI—POLYGRAPH EXAMINATION
21 AND PREPUBLICATION REVIEW

22 “§ 7361. Definitions

23 “For purposes of this subchapter—

24 “(1) the term ‘classified information’ means infor-
25 mation or material designated and clearly marked or

1 clearly represented, pursuant to the provisions of a
2 statute or Executive order, or regulation or order
3 issued pursuant thereto, as requiring a specific degree
4 of protection against unauthorized disclosure for rea-
5 sons of national security;

6 “(2) the term ‘polygraph examination’ means an
7 interview with a person which is conducted in whole or
8 in part for the purpose of enabling the examiner to
9 make an inference or a determination, by evaluation of
10 measured and recorded physiological responses, con-
11 cerning whether the person has truthfully or deceptive-
12 ly responded to inquiries made in such interview; and

13 “(3) the term ‘prepublication review’ means sub-
14 missions of information for the purpose of permitting
15 examination, alteration, excision, or other editing or
16 censorship prior to disclosure of the information to
17 anyone not authorized to have access to classified in-
18 formation, but does not include any such submission
19 with respect to information which is to be disclosed by
20 a person in his official capacity.

21 **“§ 7362. Limitation on use of polygraph examination**

22 “(a) Except as provided in sections 7363 and 7365 of
23 this title, no executive agency or military department may
24 require, request, or represent that it may or will require or
25 request, any person occupying, applying for, or under consid-

1 eration for a position in the civil service or the uniformed
2 services to submit to a polygraph examination.

3 “(b) Except as provided in sections 7363 and 7365 of
4 this title, no executive agency or military department may
5 administer, or arrange for the administration of, a polygraph
6 examination of any person occupying, applying for, or under
7 consideration for a position in the civil service or the uni-
8 formed services.

9 **“§ 7363. Law enforcement use of polygraph examination**

10 “An executive agency or military department may re-
11 quest in writing that a person occupying, applying for, or
12 under consideration for a position in the civil service or the
13 uniformed services consent to a polygraph examination, and
14 may administer or arrange for administration of such exami-
15 nation upon receipt of that person’s written consent, if—

16 “(1) the examination is to be administered as part
17 of an investigation into alleged criminal conduct consti-
18 tuting an offense punishable by death or imprisonment
19 for a term exceeding one year or into an unauthorized
20 disclosure of classified information;

21 “(2) means of investigation other than polygraph
22 examination have been exhausted to the degree reason-
23 able in the circumstances;

24 “(3) the person can reasonably be expected to
25 have knowledge of importance to the investigation; and

1 “(4) the scope of the examination is limited to the
2 subject matter of the investigation.

3 **“§ 7364. Limitation on prepublication review agreements**

4 “Except as provided in section 7365 of this title, no
5 executive agency or military department may require, re-
6 quest, or represent that it may or will require or request, that
7 any person occupying, applying for, or under consideration
8 for a position in the civil service or the uniformed services
9 enter into an agreement requiring prepublication review.

10 **“§ 7365. Intelligence, counterterrorism and special access**
11 **program use of polygraph examination and**
12 **prepublication review**

13 “Sections 7362 and 7364 of this title shall not apply
14 with respect to—

15 “(1) a person occupying, applying for, or under
16 consideration for a position, detail or assignment in an
17 agency within the Intelligence Community (as defined
18 in section 3.4(f) of Executive Order 12333);

19 “(2) a person occupying, applying for, or under
20 consideration for a position in the United States Secret
21 Service or in the elements of the Federal Bureau of
22 Investigation not within the Intelligence Community;
23 or

24 “(3) a person occupying, applying for, or under
25 consideration for a position in the civil service or the

1 **“§ 3592A. Sentence of death for espionage or treason**

2 “A defendant who has been found guilty of an offense
3 described in section 794 or section 2381 of this title shall be
4 sentenced to death if, after consideration of the factors set
5 forth in section 3593A in the course of a hearing held pursu-
6 ant to section 3594A, it is determined that imposition of a
7 sentence of death is justified.

8 **“§ 3593A. Mitigating and aggravating factors**

9 “(a) In determining whether a sentence of death is justi-
10 fied for an offense described in section 3592A, the finder of
11 fact shall consider each of the following mitigating factors
12 and determine which, if any, exist—

13 “(1) the defendant was less than eighteen years of
14 age at the time of the offense;

15 “(2) the defendant’s mental capacity was signifi-
16 cantly impaired, although the impairment was not such
17 as to constitute a defense to prosecution;

18 “(3) the defendant was under unusual and sub-
19 stantial duress, although not such duress as would con-
20 stitute a defense to prosecution; and

21 “(4) the defendant was an accomplice whose par-
22 ticipation in the offense was relatively minor.

23 The finder of fact may consider whether any other mitigating
24 factor exists.

25 “(b) In determining whether a sentence of death is justi-
26 fied for an offense described in section 3592A, the finder of

1 fact shall consider each of the following aggravating factors
2 and determine which, if any, exist—

3 “(1) the offense committed by the defendant di-
4 rectly concerned nuclear weaponry; military or intelli-
5 gence spacecraft or satellites; means of defense or re-
6 taliation against large-scale attack; military operational
7 plans; or communications intelligence or cryptographic
8 information;

9 “(2) in the commission of the offense the defend-
10 ant knowingly created a grave risk of substantial
11 danger to the national security; and

12 “(3) in the commission of the offense the defend-
13 ant knowingly created a grave risk of death to another
14 person.

15 The finder of fact may consider whether any other aggravat-
16 ing factor exists.

17 **“§ 3594A. Procedures for separate sentencing hearing**

18 “(a) If, in a case involving an offense described in sec-
19 tion 3592A, the Government believes that the circumstances
20 of the offense justify a sentence of death, the attorney for the
21 Government shall, at a reasonable time before the trial, or
22 before acceptance by the court of a plea of guilty, or at such
23 time thereafter as the court may permit upon a showing of
24 good cause, file with the court and serve on the defendant a
25 notice stating that the Government believes that the circum-

1 stances of the offense justify a sentence of death if the de-
2 fendant is found guilty. The court may permit the attorney
3 for the Government to amend the notice upon a showing of
4 good cause.

5 “(b) If the attorney for the Government has filed a
6 notice as required under subsection (a) of this section and the
7 defendant is found guilty of an offense described in section
8 3592A, the judge who presided at the trial or before whom
9 the guilty plea was entered, or another judge if that judge is
10 unavailable, shall conduct a separate sentencing hearing to
11 determine the punishment to be imposed.

12 “(c) The separate sentencing hearing required by sub-
13 section (b) of this section shall be conducted before the jury
14 which determined the defendant's guilt, except that the hear-
15 ing shall be conducted before a jury specially impaneled for
16 the purpose of the hearing if the defendant was convicted
17 upon a plea of guilty or after a trial before the court sitting
18 without a jury, or if, after initial imposition of a sentence
19 under this chapter, reconsideration of the sentence under this
20 chapter becomes necessary.

21 “(d) Notwithstanding subsection (c) of this section, the
22 separate sentencing hearing required by subsection (b) of this
23 section shall be conducted before the court alone, upon
24 motion of the defendant with the approval of the attorney for
25 the Government.

1 “(e) At the separate sentencing hearing required by sub-
2 section (b) of this section, information may be presented as to
3 any matter relevant to the sentence, including any mitigating
4 or aggravating factor required or permitted to be considered
5 under section 3593A, and may include the trial transcript
6 and exhibits. Information relevant to the sentence may be
7 presented by both the Government and the defendant regard-
8 less of its admissibility under the rules governing admission of
9 evidence at criminal trials, except that the court may exclude
10 information if its probative value is substantially outweighed
11 by the danger of unfair prejudice. The burden of establishing
12 the existence of any aggravating factor is on the Govern-
13 ment, and is not satisfied unless the existence of such a factor
14 is established beyond a reasonable doubt. The burden of es-
15 tablishing the existence of any mitigating factor is on the
16 defendant, and is not satisfied unless the existence of such a
17 factor is established by a preponderance of the information
18 presented.

19 “(f) At the conclusion of the separate sentencing hearing
20 required by subsection (b) of this section, the finder of fact
21 shall return a special finding as to each mitigating and aggra-
22 vating factor required to be considered under section 3593A,
23 concerning which information is presented at the hearing. If
24 the finder of fact is a jury, it must find the existence of any
25 mitigating or aggravating factor or factors by a unanimous

1 vote. It shall be necessary to the imposition of a sentence of
2 death that the finder of fact find that at least one aggravating
3 factor required to be considered under section 3593A(b)
4 exists.

5 “(g) If the finder of fact finds, at the conclusion of the
6 separate sentencing hearing required under subsection (b) of
7 this section, that at least one aggravating factor required to
8 be considered under section 3593A(b) exists, the finder of
9 fact shall then consider whether the aggravating factor or
10 factors found to exist sufficiently outweigh the mitigating
11 factor or factors, if any, found to exist to justify a sentence of
12 death, or, in the absence of any mitigating factor, whether
13 the aggravating factor or factors alone suffice to justify a
14 sentence of death. Based upon this consideration, the jury by
15 unanimous vote, or if there is no jury, the court, shall return
16 a finding as to whether a sentence of death is justified.

17 “(h) In the case of a separate sentencing hearing re-
18 quired under subsection (b) of this section which is held
19 before a jury, the court shall instruct the jury that, in consid-
20 ering whether a sentence of death is justified, it shall not
21 consider the race, color, national origin, creed, or gender of
22 the defendant. The jury shall, in addition to returning find-
23 ings as required by this section, return to the court sworn
24 certificates of each of the jurors that consideration of the
25 race, color, national origin, creed, or gender of the defendant

1 was not involved in reaching juror's individual decision with
2 respect to the findings returned.

3 **"§ 3595A. Imposition of a sentence of death**

4 "Upon a return of a finding under section 3594A(g) that
5 a sentence of death is justified, the court shall sentence the
6 defendant to death. In the absence of such a finding, the
7 court shall impose any sentence other than death that is au-
8 thorized by law, and, notwithstanding any other provision of
9 law, the court may impose a sentence of life imprisonment
10 without parole.

11 **"§ 3596A. Review of a sentence of death**

12 "(a) In a case in which a sentence of death is imposed,
13 the sentence shall be subject to review by the court of ap-
14 peals by the defendant. An appeal under this section of the
15 sentence of death may be consolidated with an appeal of the
16 judgment of conviction and shall have priority over all other
17 cases.

18 "(b) In proceeding upon an appeal under subsection (a)
19 of this section of a sentence of death, the court of appeals
20 shall review the entire record in the case, including the infor-
21 mation presented during the sentencing hearing, the proce-
22 dures employed in the sentencing hearing, and the findings
23 returned under section 3594A.

1 TITLE VII

2 SEC. 701. This title may be cited as the "Foreign Intel-
3 ligence Source Improvement Act".

4 SEC. 702. Section 7 of the Central Intelligence Agency
5 Act of 1949, as amended (50 U.S.C. 403h) is amended by
6 inserting "(a)" after "SEC. 7." and adding at the end thereof
7 the following new subsection—

8 "(b)(1) The President may, notwithstanding any other
9 law, naturalize as a citizen of the United States an alien
10 admitted to the United States for permanent residence pursu-
11 ant to subsection (a) of this section if—

12 "(A) the Attorney General determines and certi-
13 fies to the President that the alien is a person of good
14 moral character, attached to the principles of the Con-
15 stitution of the United States and well disposed to the
16 good order and happiness of the United States, and

17 "(B) the President finds that the foreign intelli-
18 gence activities of the alien on behalf of the United
19 States have contributed substantially to the security of
20 the United States,

21 except that in no case shall the number of aliens naturalized
22 in any fiscal year pursuant to this subsection exceed five.

23 "(2) Prior to naturalization under paragraph (1) of this
24 subsection, an alien to be naturalized under such paragraph
25 shall, before an officer of the executive branch designated for

1 the purpose by the President, take the oath of renunciation of
2 former citizenship and acceptance of allegiance to the United
3 States required of an alien naturalized under other provisions
4 of law.

5 “(3) Notwithstanding any other law, a district court of
6 the United States, upon application of the Attorney General
7 under this subsection, shall, in a manner consistent with the
8 protection of intelligence sources, methods and activities,
9 issue or cause to be issued such documents relating to an
10 alien naturalized by the President under this subsection as
11 are issued relating to an alien naturalized under other provi-
12 sions of law, and such documents relating to an alien natural-
13 ized by the President shall have the same legal effect as doc-
14 uments issued relating to an alien naturalized under other
15 provisions of law.

16 “(4) The President may not delegate the authority
17 granted in paragraph (1) of this subsection, anything in sec-
18 tion 301 of title 3, United States Code, to the contrary not-
19 withstanding.

20 “(5) The President shall notify the Permanent Select
21 Committee on Intelligence of the House of Representatives
22 and the Select Committee on Intelligence of the Senate each
23 time the authority granted in paragraph (1) of this subsection
24 is exercised.”.

1 TITLE VIII

2 SEC. 801. This title may be cited as the "Intelligence
3 Identities Protection-Related Amendments".

4 SEC. 802. Section 8312(c)(1)(C) of title 5, United States
5 Code is amended by striking the period at the end thereof and
6 inserting in lieu thereof "or section 601 of the National Secu-
7 rity Act of 1947 (50 U.S.C. 421) (relating to intelligence
8 identities)".

9 SEC. 803. Section 2516(1)(a) of title 18, United States
10 Code is amended by striking the first comma and inserting in
11 lieu thereof ", section 601 of the National Security Act of
12 1947 (relating to intelligence identities)".

13 TITLE IX

14 SEC. 901. This Act may be cited as the "Foreign Intel-
15 ligence Surveillance Amendments".

16 SEC. 902. Section 105(e) of the Foreign Intelligence
17 Surveillance Act of 1978 (50 U.S.C. 1805(e)) is amended by
18 striking "twenty-four hours" each time it appears and insert-
19 ing each time in lieu thereof "forty-eight hours".

20 SEC. 903. (a) Section 105(f)(1)(C) of the Foreign Intelli-
21 gence Surveillance Act of 1978 (50 U.S.C. 1805(f)(1)(C)) is
22 amended by striking the semicolon and inserting in lieu there-
23 of ", except that, with the approval of the Attorney General
24 or his designee, the contents may be retained and disseminat-

1 ed if they consist of information which indicates a threat of
2 death or serious bodily harm to any person;”.

3 (b) Section 105(f)(2)(C) of the Foreign Intelligence Sur-
4 veillance Act of 1978 (50 U.S.C. 1805(f)(2)(C)) is amended
5 by striking the semicolon and inserting in lieu thereof
6 “, except that, with the approval of the Attorney General or
7 his designee, the information may be retained and dissemi-
8 nated if it indicates a threat of death or serious bodily harm to
9 any person;”.

10 SEC. 904. (a) Title II of the Foreign Intelligence Sur-
11 veillance Act of 1978 is amended by adding at the end there-
12 of the following new section:

13 “RELATIONSHIP TO CHAPTER 119 OF TITLE 18, UNITED
14 STATES CODE

15 “SEC. 202. Whenever, in a particular situation, the
16 United States could obtain an order for interception of wire
17 or oral communications under chapter 119 of title 18, United
18 States Code, or an order for electronic surveillance under this
19 Act, the United States may proceed under either statute, or
20 both.”.

21 TITLE X

22 SEC. 1001. This title may be cited as the “Congressional
23 Security Survey Act”.

24 SEC. 1002. Subject to the guidance of the Speaker and
25 minority leader of the House of Representatives with respect
26 to the House of Representatives, and subject to the guidance

1 of the majority and minority leaders with respect to the
2 Senate, the Director of the Federal Bureau of Investigation,
3 in cooperation with such Federal agencies as he deems ap-
4 propriate, shall conduct a comprehensive survey of the per-
5 sonnel, physical, document and communications security ar-
6 rangements relating to classified information available to
7 Members of Congress and employees of the legislative branch
8 and report to the Speaker and minority leader of the House
9 of Representatives, and the majority and minority leaders of
10 the Senate, by January 3, 1986, with recommendations for
11 improvement of such arrangements.

12 SEC. 1003. All Federal departments, agencies and in-
13 strumentalities are authorized and directed to provide such
14 assistance to the Director of the Federal Bureau of Investiga-
15 tion as he may deem appropriate to carry out the provisions
16 of section 1002.

17 SEC. 1004. There are hereby authorized to be appro-
18 priated such sums as may be necessary to carry out the
19 provisions of this title.

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